



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 2841

Examiner: Kayes, Sean Phillip

Serial No. 10/789,388

Filed: 2/28/2004

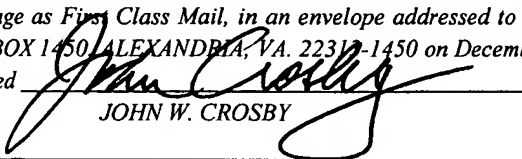
In Re Application of: John P. Kallestad

For: DAY AND TIME CHRONOMETER MOVEMENT

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail, in an envelope addressed to MAIL STOP PETITION, COMMISSIONER FOR PATENTS, PO BOX 1450, ALEXANDRIA, VA. 22312-1450 on December 31, 2008.

Signed


JOHN W. CROSBYRENEWED PETITION UNDER 37 C.F.R. 1.137(b)

Mail Stop Petition
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant's Petition to Revive an Unintentionally Abandoned Patent Application, filed September 2, 2008, has been dismissed. Applicant requests reconsideration of this dismissal, and expresses bewilderment at the USPTO's reason for the dismissal being that Brian C. Kelly was attorney of record in the present application at the time the office action and notice of abandonment were mailed, despite Applicant designating new attorneys and receiving correspondence from the USPTO through this new representative. Essentially, the argument made in support of a dismissal of Applicant's petition to revive is that, despite the USPTO's failure to communicate with Applicant's representative who successfully revived the abandoned application months earlier, Applicant has *intentionally* abandoned the present application. The dismissal of Applicant's Petition

marks the ***third*** failure of the USPTO to recognize that the undersigned was authorized to prosecute this application, not Brian C. Kelly, at the time the Nonfinal Office Action and Notice of Abandonment were erroneously mailed to Brian C. Kelly and an undeliverable address. There is NO Applicant signature anywhere in this application's file history that authorizes Brian C. Kelly, Ltd., and there was a signed power of attorney designating the undersigned filed with the USPTO on May 10, 2005, that should have resulted in revocation by the USPTO of Brian C. Kelly's authorization of attorney in this application. Instead, Applicant was not informed of the abandonment until weeks before the Petition to Revive was filed on September 2, 2008.

Applicant respectfully submits that the file history of the present application has not been adequately considered by either Examiner Kayes or Examiner Brown. For this reason, Applicant lists the timeline of relevant events so that it will be apparent that **to dismiss Applicant's Petition is fundamentally unfair.**

1. 2/28/04: Brian C. Kelly files with the USPTO application 10/789,388 having a specification, drawings, and claims. No fees are paid and no signatures from Applicant authorizing Brian C. Kelly are filed.
2. 5/19/04: Pre-Exam Formalities Notice is sent by the USPTO to Brian C. Kelly's office. Brian C. Kelly does not file any response with the USPTO on this application.
3. 2/11/05: Notice of Abandonment sent by the USPTO to Brian C. Kelly's office, citing failure to respond to Pre-Exam Formalities Notice sent on 5/19/04.
4. 5/10/05: **Applicant, unable to locate Brian C. Kelly, files power of attorney naming Sierra Patent Group, Ltd. and John Crosby to prosecute application 10/789,388, along with Petition to Revive Unintentionally Abandoned**

Application, declaration, and payment of fees. This Power of Attorney automatically revokes Brian C. Kelly's status as attorney of record. However, no revocation is sent from the USPTO to Brian C. Kelly.

5. 8/04/05: USPTO mails decision granting Petition to Revive Unintentionally Abandoned Patent Application to John Crosby at Sierra Patent Group, Ltd. This decision is received at Sierra Patent Group, Ltd on 8/08/05. At this point, USPTO *apparently* recognizes the authorized attorneys, and Applicant has no reason to believe that subsequent communication will be sent to anyone other than Sierra Patent Group, Ltd. and John Crosby.

6. 1/27/06: USPTO erroneously mails Nonfinal Office Action to Brian C. Kelly, despite having for this application a Power of Attorney naming Sierra Patent Group, Ltd. and John Crosby. This is the first time the USPTO fails to recognize Applicant's duly-authorized attorneys, and starts a clock ticking toward abandonment.

7. 2/06/06: The Nonfinal Office Action mailed to Brian C. Kelly is returned to the USPTO as undeliverable. However, the mistake in sending the Nonfinal Office Action is not realized at the USPTO, and the Nonfinal office Action is never sent to Sierra Patent Group, Ltd.

8. 9/06/06: Despite receiving the undeliverable Nonfinal Office Action, the USPTO sends a Notice of Abandonment to Brian C. Kelly at the same (undeliverable) address. This is the **second** time the USPTO fails to recognize the proper attorney authorization and sends correspondence to the wrong representative.

9. 9/22/06: The Notice of Abandonment is returned to the USPTO as undeliverable mail.

10. 1/31/08: Applicant executes new Authorization of Agent appointing John Crosby separately from Sierra Patent Group, Ltd.
11. 1/31/08: John Crosby files Status Request with USPTO.
12. 2/08/08: USPTO sends John Crosby Acceptance of Authorization. No status information is sent to John Crosby.
13. 2/08/08: USPTO sends notification of revocation of power of attorney to Brian C. Kelly's old address.
14. 2/15/08: USPTO receives revocation notice sent to Brian C. Kelly as undeliverable mail.
15. 8/05/08: Applicant informs John Crosby that a conversation with USPTO revealed that application is abandoned.
16. 9/02/08: Applicant files Petition to Revive Unintentionally Abandoned Patent Application.
17. 10/01/08: USPTO dismisses Petition to Revive Unintentionally Abandoned Patent Application, citing Applicant's **intentional** abandonment of application based on failure to reply to both the Nonfinal Office Action mailed to an unauthorized practitioner AFTER Sierra Patent Group and John Crosby filed Power of Attorney nearly three months earlier, and Applicant's delay in filing a Petition to Revive Unintentionally Abandoned Patent Application, when the Notice of Abandonment ALSO was sent to an unauthorized practitioner more than SIX months after Applicant revoked Brian C. Kelly's power of attorney.

In the dismissal mailed 10/1/08, Examiner Brown erroneously states on page 2 of the dismissal dated Oct 1, 2008, that “Brian C. Kelly was counsel of record at the time of abandonment” at the time of the Nonfinal Office Action and Notice of Abandonment were issued. This marks the **THIRD** time the USPTO fails to recognize John Crosby as duly authorized by Applicant to prosecute the present application, as this statement fails to recognize the only power of attorney ever filed in this application, that was filed months before either the Nonfinal Office Action or Notice of Abandonment were mailed by the USPTO.

Examiner Brown states in the dismissal that Applicant needs to explain why there was no response to period (1), the period after sending the Nonfinal Office Action on 1/27/06. Applicant points to the timeline above, and submits that This Nonfinal Office Action was not mailed to the authorized attorneys but instead was sent to an attorney whose representation should have been revoked by the USPTO, and then returned as undeliverable mail to the USPTO. Applicant submits that these actions failed to provide notice to Applicant that an Office Action had been issued. Meanwhile, Applicant periodically asked the undersigned if any communication from the USPTO had been received on the present Application. After checking the docketing systems of Sierra Patent Group, Ltd. and mail logs received daily at Sierra Patent Group, Ltd., the undersigned periodically communicated to Applicant that no communication had been received from the USPTO subsequent to receiving from the USPTO notification of its decision granting the petition to revive filed on 5/10/2005. In short, Applicant was in waiting-to-hear mode, awaiting a response from the USPTO.

Examiner Brown states in the dismissal that Applicant needs to explain why there was no response to in period (2), the period after the Notice of Abandonment was sent to Brian C. Kelly on 9/6/06. Applicant again submits that the Notice of Abandonment was not mailed to its authorized attorneys, as Brian C. Kelly’s authorization ended with the filing

of the Power of Attorney on 5/10/06, and therefore the USPTO's communication with a unauthorized attorney failed to provide notice to the Applicant that the application had been abandoned.

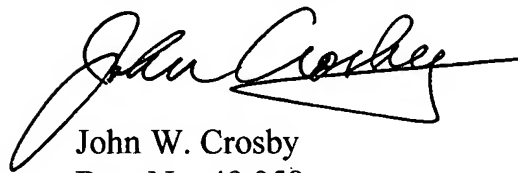
The fact that the undersigned filed a new Authorization of Agent AND status request proves that Applicant believed the application was still pending. Furthermore, as two and a half years is not an unheard of length of time for the USPTO to examine a patent application, it is a reasonable assumption that the application was still pending. As stated above, Applicant and the undersigned routinely touched base about the status of this application.

Eventually, Applicant telephoned the USPTO and was informed of the abandonment of the present application. Applicant notified the undersigned as soon as possible of the abandoned status of the present application, and filed a Petition to Revive Unintentionally Abandoned Patent Application within two years of the mailing date of the Notice of Abandonment, and less than 30 days after notifying the undersigned of the abandoned status.

OUT OF FUNDAMENTAL FAIRNESS, Applicant **PLEADS** with Examiner Brown to recognize that in no way can an Applicant be seen as intentionally abandoning a patent application when correspondence is not mailed to Applicant or Applicant's licensed representative, and that Applicant was proactive and moved swiftly when informed that the application was abandoned.

Applicant requests Examiner to reconsider favorably and grant the petition to Revive the Unintentionally Abandoned Application in the instant application so that prosecution on the merits can resume.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Crosby", with a long horizontal flourish extending to the right.

John W. Crosby
Reg. No. 49,058

Date: December 31, 2008

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